

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

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|-------------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | No. CV-F-05-0431 REC LJO |
| |) | |
| Plaintiff, |) | ORDER GRANTING UNITED |
| |) | STATES' MOTION FOR DEFAULT |
| vs. |) | JUDGMENT, FINAL JUDGMENT, |
| |) | AND ORDER OF FORECLOSURE. |
| GEORGE LOREN REED, |) | |
| Individually and as Trustee |) | (Doc. 36) |
| of the REED FAMILY TRUST; |) | |
| DUANE REED, Individually and |) | |
| as Trustee of the REED FAMILY |) | |
| TRUST; LIDCO INC.; and |) | |
| SHIRLEY LUNDY, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

On January 9, 2006, the Court heard the United States' Motion for Default Judgment, Final Judgment, and Order of Foreclosure (the "Motion"). Upon due consideration of the written and oral arguments of the parties and the record herein, the Court GRANTS the Motion as set forth herein.

I. Background

In this action, the United States seeks to foreclose on certain real property, which it identifies as Parcels 1, 2, and 3

1 and the adjoining parcels (the "Adjoining Parcels"), to satisfy
2 federal tax liability.

3 **A. The Subject Property**

4 The parcels are described as follows:

5 Parcel No. 1:

6 All that portion of west 1/2 of the southeast 1/4 of
7 the southeast 1/4 of section 10 Townsh[i]p 3 South,
8 Range 8 East, M.D.B. & M, which lies south of Lateral
9 No. 7 of Modesto Irrigation District.

10 Excepting therefrom all that portion of the west 1/2 of
11 the southeast 1/4 of the southeast 1/4 bounded and
12 particularly described as follows:

13 Commencing at the southeast corner of the west 1/2 of
14 the southeast 1/4 of the southeast 1/4 of said section
15 10, above Township and Range; thence running north
16 along the east line of said west 1/2 a distance of 20
17 feet to the north side of county road known as Beckwith
18 Road to the point of beginning of this description;
19 thence continuing north along the east line of said
20 west 1/2, a distance of 125 feet to a point; thence
21 west and parallel to the south line of said southeast
22 1/4 of said section 10, a distance of 135 feet to a
23 point; thence south and parallel to the east line of
24 the said west 1/2 of said southeast 1/4 of the
25 southeast 1/4 of said Section 10, a distance of 125
26 feet to a point on the north line of said county road;
thence east along the north line of said county road, a
distance of 135 feet to the point of beginning.

Also excepting therefrom all that portion of the west
1/2 of the southeast 1/4 of the southeast 1/4 bounded
and particularly described as follows:

Commencing at the southeast corner of the west 1/2 of
the southeast 1/4 of the southeast 1/4 of said section
10; thence north and along the east line of said west
1/2 of the southeast 1/4 of the southeast 1/4 to the
north side of the county road (Beckwith Road); thence
west and along the north line of said Beckwith Road, a
distance of 135 feet to the southwest corner of the
property conveyed to Wood Colony Grange, No. 522 by
deed, recorded December 24, 1937, as instrument no.
16207 and being the true pont of beginning of this
description; thence north and parallel to the east line

1 of the west 1/2 of the southeast 1/4 of the southeast
2 1/4 of said section 10 and along the west line of said
3 Grange property 125 feet; thence continuing north and
4 parallel to the east line of the west 1/2 of the
5 southeast 1/4 of the southeast 1/4 of said section 10,
6 15 feet; thence west and parallel to the north line of
7 Beckwith Road 75 feet; thence south and parallel to the
8 east line of the west 1/2 of the southeast 1/4 of the
9 southeast 1/4 of section 10, 140 feet to a point in the
10 north line of said Beckwith Road; thence east and along
11 the north line of said Beckwith road, a distance of 75
12 feet to the true point of beginning of this
13 description.

14 Also exception therefrom all that portion of the west
15 1/2 of the southeast 1/4 of the southeast 1/4 bounded
16 and particularly described as follows:

17 Commencing at the southeast corner of the west 1/2 of
18 the southeast 1/4 of the southeast 1/4 of said section
19 10; thence north, on the east line of said west 1/2 of
20 the southeast 1/4 of the southeast 1/4 of section 10, a
21 distance of 145 feet to the northeast corner of the
22 property conveyed to George Raymond Reed and Gladys
23 Reed, husband and wife, by grand deed recorded in Book
24 2021 of official records, at page 165, Stanislaus
25 County Records Office, and the point of beginning of
26 this description; thence west parallel with the south
line of the southeast 1/4 of said section 10, a
distance of 135 feet; thence north parallel with the
east line
of said west 1/2 of the southeast 1/4 of the southeast 1/4
of said section 10, a distance of 100 feet; thence east,
parallel with the south line of the southeast 1/4 of said
section 10, a distance of 135 feet to the aforesaid east
line of the west 1/2 of the southeast 1/4 of the southeast
1/4 of said section 10; thence south, on said east line of
the west 1/2 of the southeast 1/4 of the southeast 1/4 of
section 10, a distance of 100 feet to the point of
beginning.

Also excepting therefrom parcel A, as shown on a parcel
map filed December 16, 1969 in Book 8 of parcel maps,
at page 3, Stanislaus County Recorder, being a portion
of the southeast 1/4 of the southeast 1/4 of Section
10, Township 3 south, Range 8 East, M.D.B. & M.

1 Parcel No. 2:

2 Parcel A:

3 All that portion of the west 1/2 of the southeast 1/4
4 of the southeast 1/4 bounded and particularly described
5 as follows:

6 Commencing at the southeast corner of the west 1/2 of
7 the southeast 1/4 of the southeast 1/4 of said Section
8 10, above township and range; thence running north
9 along the east line of said west 1/2 a distance of 20
10 feet to the north side of county road known as Beckwith
11 Road to the point of beginning of this description;
12 thence continuing north along the east line of said
13 west 1/2, a distance of 125 feet to a point; thence
14 west and parallel to the south line of said southeast
15 1/4 of said Section 10, a distance of 135 feet to a
16 point; thence south and parallel to the east line of
17 the said west 1/2 of said southeast 1/4 of the
18 southeast 1/4 of said Section 10, a distance of 125
19 feet to a point on the north line of said county road;
20 thence east along the north line of said county road, a
21 distance 135 feet to the point of beginning.

22 Parcel B:

23 All that portion of the west 1/2 of the southeast 1/4
24 of the southeast 1/4 bounded and particularly described
25 as follows:

26 Commencing at the southeast corner of the west 1/2 of
27 the southeast 1/4 of the southeast 1/4 of said Section
28 10; thence north, on the east line of said west 1/2 of
29 the southeast 1/4 of the southeast 1/4 of Section 10, a
30 distance of 145 feet to the northeast corner of the
31 property conveyed to George Raymond Reed and Gladys
32 Reed, husband and wife, by grant deed recorded in Book
33 2021 of Official Records, at page 165, Stanislaus
34 County recorder's office, and the point of beginning of
35 this description; thence west parallel with the south
36 line of the southeast 1/4 of said Section 10, a
37 distance of 135 feet; thence north parallel with the
38 east line of said west 1/2 of the southeast 1/4 of the
39 southeast 1/4 of said Section 10, a distance of 100
40 feet; thence east, parallel with the south line of the
41 southeast 1/4 of said Section 10, a distance of 135
42 feet to the aforesaid east line of the west 1/2 of the
43 southeast 1/4 of the southeast 1/4 of said Section 10,
44 thence south, on said east line of the west 1/2 of the
45 southeast 1/4 of the southeast 1/4 of Section 10, a

1 distance of 100 feet to the point of beginning.

2 Parcel No. 3:

3 The west 120 feet of the east 642 feet of the south 170
4 feet of the southeast 1/4 of the southeast 1/4 of
Section 10, Township 3 south, Range 8 east M.D.B. & M.

5 Excepting therefrom the south 20 feet.

6 The Adjoining Parcels:

7 All that portion of the Southeast 1/4 of Section
Township 3, South Range 8 East M.D.B. & M, as follows:

8 Commencing at the Southeast corner of said Section 10;
9 thence North 20 feet to the North side of Beckwith
Road; thence West along North side said road 642 feet
10 to the point of beginning; thence continuing along
North side road 15.85 feet more or less; thence North
11 776 feet more or less to the South line of a canal;
12 thence Southeast along South line canal 15.85 feet more
or less; thence South 776 feet or more or less to the
point of beginning.

13 EXCEPTING THEREFROM the North 450 feet.

14
15 Kane Decl. ¶ 3.

16 **B. The Prior Actions**

17 In a previous action before this Court, United States v.
18 George Raymond Reed, Civ. No. F-88-106 EDP, the United States
19 secured money judgments against George Raymond Reed and Gladys
20 Reed (collectively the "Taxpayers") in the amount of \$283,272.33,
21 plus penalties and interest since February 22, 1988. Ham Decl.
22 Ex. A. In those proceedings, the United States also secured a
23 money judgment against George Loren Reed in the amount of
24 \$356,778.28, which it is not currently seeking to enforce. Id.
25 On October 2, 1991, abstracts of these judgments were recorded
26 with the County Recorder's Office for Stanislaus County. Ham

1 Decl. Exs. B, C & D. As of September 15, 2003, George Raymond
2 Reed and Gladys Reed remain indebted to the United States in the
3 amounts of \$1,003,132.86 and \$1,004,999.17, respectively. Reece
4 Decl. ¶¶ 6-7.

5 In the previous action, the Court found that the transfer of
6 two parcels of land, Parcels 2 and 3,¹ was fraudulent and
7 therefore a nullity with respect to the United States. Ham Decl.
8 Ex. A at 2. On March 11, 1992, the Court allowed the United
9 States to enforce its money judgments against the Taxpayers by
10 foreclosing its federal tax liens on Parcels 2 and 3. Ham Decl.
11 Ex. F. The foreclosure was not completed because of the
12 Taxpayers' age and occupancy of the parcels and the poor real
13 estate market at that time. Reece Decl. ¶ 8.

14 On July 28, 2004, upon the deaths of the Taxpayers, the
15 United States filed its motion for an amended order of
16 foreclosure, seeking to enforce its money judgments against
17 Parcels 2 and 3. The United States has discovered Parcel 1 and
18 the Additional Parcels that are held by the Reed Family Trust
19 (the "Trust") or by George Raymond Reed. Kane Decl. ¶¶ 3-4. The
20 Taxpayers issued three deeds of trust on March 23, 1987, and one
21 deed of trust on April 29, 1992, each of which lists Shirley M.

22
23 ¹The naming of the parcels is different in the United States'
24 briefs in this action from the Order and Decree of Foreclosure (the
25 "Order and Decree") in the previous case. Parcel 2 in this action
26 is made up of the parcels referred to as Parcel 1 and Parcel 2 in
the previous action. Parcel 3 in this action is the same as Parcel
3 in the previous action. Parcel 1 and the Adjoining Parcels in
this action were recently discovered, and so they are not described
in the previous Order and Decree.

1 Lundy, Duane C. Reed, and George L. Reed as beneficiaries.

2 **C. This Action**

3 On March 31, 2005, the United States initiated this action.
4 It seeks to enforce its money judgments against the Taxpayers
5 against Parcels 1, 2 and 3 and the Adjoining Parcels
6 (collectively the "Subject Property"). The suit does not name
7 George Raymond Reed or Gladys Reed, as they are deceased. The
8 defendants in this action were George Loren Reed and Duane Reed,
9 both individually and as trustees of the Reed Family Trust,
10 Lidco, Inc. ("Lidco"), and Shirley Lundy. On May 3, 2005, the
11 United States filed its First Amended Complaint ("FAC").

12 On June 8, 2005, Lidco, which holds a judgment lien, entered
13 into a stipulation with the United States dismissing Lidco from
14 the action and establishing the relative priorities of their
15 claims to the Subject Property.

16 On June 10, 2005, the Clerk of the Court entered a default
17 as to Duane Reed and George Loren Reed. On September 27, 2005,
18 the Clerk entered a default as to Shirley Lundy. On November 2,
19 2005, the United States filed a Motion for Default Judgment,
20 Final Judgment, and Order of Foreclosure (the "Motion"),
21 supported by declarations and exhibits. On December 8, 2005,
22 Duane Reed, George Loren Reed, and Shirley Lundy (collectively
23 "Defendants") moved for an extension in order to seek counsel.
24 On December 13, 2005, the Court continued the hearing until
25 January 9, 2006. Defendants did not give notice that they have
26 obtained counsel, file any response to the Motion, or appear at

oral argument.

II. Discussion

A. Legal Standards

Rule 55 of the Federal Rules of Civil Procedure provides that the Court may enter a default judgment “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend” A party must file an answer or motion to dismiss within 20 days of service of the summons and complaint. Fed. R. Civ. P. 12. Rule 55 provides that default judgment may be granted to a party entitled to it by either the Clerk or the Court. In cases in which damages are not for a “sum certain,” a party must seek default through the Court pursuant to Rule 55(b)(2). Upon default, the allegations of a well-pleaded complaint are taken as true. Adriana Int’l Corp. v. Lewis & Co., 913 F.2d 1406, 1414 (9th Cir. 1990) (citing Geddes v. United Fin. Group, 559 F.32d 557, 560 (9th Cir. 1977)).

B. Res Judicata Regarding the Taxpayers’ Tax Liabilities

The United States seeks an adjudication of the tax liabilities of George Raymond Reed and Gladys Reed based on res judicata.

Res judicata, or claim preclusion, bars claims that should have been raised and resolved in earlier litigation between the same parties. Generally, a claim is barred under this doctrine if the earlier litigation: (1) concerned the same claim as the current action, (2) reached final judgment on the merits, and (3) involved the same parties.

1 Communic'ns Telesystems Int'l v. Cal. Pub. Util. Comm'n, 196 F.3d
2 1011, 1017 (9th Cir. 1999) (citing Nordhorn v. Ladish Co., 9 F.3d
3 1402, 1404 (9th Cir. 1993)). To determine whether a case
4 concerns the same claim as a previous action, the Ninth Circuit
5 primarily examines "whether the two suits arise out of the same
6 transactional nucleus of fact," though [it] also consider[s]
7 other factors as necessary." United States v. Northrop Corp.,
8 147 F.3d 905, 910 (9th Cir. 1998) (quoting Costantini v. Trans
9 World Airlines, 681 F.2d 1199, 1201-02 (9th Cir. 1982)). To
10 determine whether two events arise from the same transaction,
11 courts consider whether they are "related to the same set of
12 facts and whether they could conveniently be tried together."
13 Int'l Union of Operating Eng'rs-Employers Constr. Indus. Pension,
14 Welfare and Training Trust Funds v. Karr, 994 F.2d 1426, 1429
15 (9th Cir. 1993) (quoting W. Sys., Inc. v. Ulloa, 958 F.2d 864,
16 870 (9th Cir. 1992)). Other factors courts consider are "(1)
17 whether rights or interests established in the prior judgment
18 would be destroyed or impaired by prosecution of the second
19 action; (2) whether substantially the same evidence is presented
20 in the two actions; [and] (3) whether the two suits involve
21 infringement of the same right." Costantini, 681 F.2d at 1201-02
22 (citing Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir. 1980)).
23 "In the tax context, once a taxpayer's liability for a particular
24 year is litigated, 'a judgment on the merits is res judicata as
25 to any subsequent proceeding involving the same claim and the
26 same tax year.'" Baker v. IRS, 74 F.3d 906, 910 (9th Cir. 1996)

1 (quoting Commissioner v. Sunnen, 333 U.S. 591, 598, 68 S. Ct.
2 715, 92 L. Ed. 898 (1948)).

3 The Court, by its order of December 11, 1989, has already
4 adjudged in the previous action that the Taxpayers' are liable to
5 the United States in the amount of \$283,272.33, plus interest and
6 penalties since February 22, 1988. Ham Decl. Ex. A at 2. As of
7 September 15, 2003, George Raymond Reed remains liable to the
8 United States in the amount of \$1,003,132.86, and Gladys Reed
9 remains liable for \$1,004,999.17. Reece Decl. ¶¶ 6-7. Reece
10 Decl. ¶ 6. The current proceedings are an effort to enforce a
11 judgment on the same claims in the previous action. The United
12 States is free to enforce the earlier tax judgment at any time.
13 See United States v. Overman, 424 F.2d 1142, 1147 (9th Cir.
14 1970).

15 The Court's order of December 11, 1989, is res judicata as
16 to the Taxpayers' tax liabilities in this action. Accordingly,
17 the Court finds that, as of September 15, 2003, George Raymond
18 Reed remains indebted to the United States for outstanding
19 federal tax liabilities in the amount of \$1,003,132.86. As of
20 September 15, 2003, Gladys Reed remains indebted to the United
21 States for outstanding federal tax liabilities in the amount of
22 \$1,004,999.17.

23 **C. Collateral Estoppel Regarding the Fraudulent Conveyance**
24 **of Parcels 2 and 3**

25 The United States asks the Court to find, based on
26 Defendants' default, that George Loren Reed and Duane Reed

(collectively "Successors") are collaterally estopped from contesting the Court's finding that the Taxpayers fraudulently transferred Parcels 2 and 3 to the Trust. "Offensive collateral estoppel" allows the plaintiff to foreclose the defendant from litigating an issue that it has already unsuccessfully litigated in an action with another party. Pena v. Gardner, 976 F.2d 469, 472 (9th Cir. 1992). Offensive collateral estoppel is appropriate only where

(1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action."

Id.

In the previous action, the Court found that Parcels 2 and 3 were fraudulently conveyed. Ham Decl. Ex. A at 2. Consequently, the Court held that the transfers "void" and "of no effect, as to the rights of the United States." Id. The Taxpayers had an opportunity to fully and fairly litigate this issue because it was decided on a motion for summary judgment that Taxpayers opposed.

In determining whether the issue was actually litigated in those proceedings, the Court must determine whether Taxpayer substantially participated in the proceedings by engaging in "obstructive tactics" to protect their interests in the litigation. IRS v. Palmer (In re Palmer), 207 F.3d 566, 568 (9th

1 Cir. 2000) (citing FDIC v. Daily (In re Daily), 47 F.3d 365, 368
2 (9th Cir. 1995)). After reviewing the docket and file in United
3 States v. George Raymond Reed, Civ. No. F-88-106 EDP, the Court
4 concludes that the issue was actually litigated. Taxpayers
5 retained counsel, filed an answer to the complaint denying that
6 the conveyances were fraudulent, and filed a memorandum of points
7 and authorities and a statement of disputed facts in opposition
8 to the motion for summary judgment. Docket, United States v.
9 George Raymond Reed, Civ. No. F-88-106 EDP. The Taxpayers
10 actually litigated the United States' claim that the conveyances
11 of Parcels 2 and 3 were fraudulent.

12 The United States also must show that the persons against
13 whom collateral estoppel is asserted, the Successors, are in
14 privity with the Taxpayers. The United States asserts that they
15 are in privity with the Taxpayers because, as direct heirs, they
16 were substituted as the new trustees of the Trust upon the
17 Taxpayers' deaths. FAC ¶¶ 6, 17-20. "'Privity' . . . is a legal
18 conclusion 'designating a person so identified in interest with a
19 party to former litigation that he represents precisely the same
20 right in respect to the subject matter involved.'" Headwaters
21 Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1052-53 (9th Cir.
22 2005).

23 The Court takes as true the United States' allegations that
24 the Successors became trustees of the Trust upon Gladys Reed's
25 death on July 26, 2002. FAC ¶ 19. As successor trustees,
26 Successors necessarily have identical interests and an identical

1 relationship to the Subject Property as their predecessors did.
2 See First Nat'l Bank v. Ickes, 154 F.2d 851, 853 (D.C. Cir. 1946)
3 (successor fiduciary is in privity with predecessor); cf. Rives
4 v. Franklin Life Ins. Co., 792 F.2d 1324, 1329 (5th Cir. 1986)
5 (finding that based on the "well established rule" that "a
6 successor fiduciary of an estate is in privity with his
7 predecessor," the court's ruling against the current trustee
8 would be binding against a successor trustee). Therefore,
9 Successors are in privity with Taxpayers.

10 Because all of the requirements for collateral estoppel are
11 met, the Court finds that Successors are collaterally estopped
12 from contesting the Court's findings in the previous action that
13 the conveyances of Parcels 2 and 3 to the Trust were fraudulent
14 and therefore a nullity with respect to the United States.

15 **D. Default Judgment Regarding Parcel 1**

16 The United States urges the Court to find that the
17 Taxpayers' transfer of Parcel 1 to themselves as trustees of the
18 Trust is a nullity with respect to the United States based on the
19 claims in its FAC. The United States further alleges that George
20 Loren Reed and Duane Reed, as the Taxpayers only known direct
21 heirs, succeeded the Taxpayers as trustees of the Trust after
22 Taxpayers' deaths. Because Defendants are in default, the Court
23 takes well-pleaded allegations in the FAC as true in analyzing
24 this claim. See Adriana Int'l, 913 F.2d at 1414.

25 The United States claims that the transfer is a fraudulent
26

1 conveyance pursuant to California Civil Code sections 3439.04²
2 and 3439.05.³ In the FAC, the United States claims that the
3 conveyance of Parcel 1 "was made with the intent to hinder,
4 delay, or defraud" creditors. FAC ¶ 34. This allegation
5 establishes that the conveyance was fraudulent under section
6 3439.04, allowing the United States to avoid the transfer to the
7 extent necessary to satisfy its claim. See Cal. Civ. Code
8 § 3439.07(a)(1).⁴ Accordingly, the purported transfer of Parcel

9
10 ²Section 3439.04 provides, in relevant part,

11 (a) A transfer made or obligation incurred by
12 a debtor is fraudulent as to a creditor,
13 whether the creditor's claim arose before or
14 after the transfer was made or the obligation
15 was incurred, if the debtor made the transfer
16 or incurred the obligation as follows:

17 (1) With actual intent to hinder, delay,
18 or defraud any creditor of the debtor.

19 . . .

20 ³Section 3439.05 provides, in full,

21 A transfer made or obligation incurred by a
22 debtor is fraudulent as to a creditor whose
23 claim arose before the transfer was made or
24 the obligation was incurred if the debtor made
25 the transfer or incurred the obligation
26 without receiving a reasonably equivalent
value in exchange for the transfer or
obligation and the debtor was insolvent at
that time or the debtor became insolvent as a
result of the transfer or obligation.

27 ⁴The United States also claims that the transfer of Parcel 1
28 is a nullity with respect to its claims on two other grounds: (1)
29 the Trust is the alter ego or nominee of the Taxpayers and (2) the
30 Trust was a revocable trust under California law during the
31 lifetimes of the taxpayers. Because the transfer of Parcel 1 is
32 invalid under California Civil Code sections 3439.04 and 3439.05,
33 the Court need not decide the United States' alternative arguments.

1 1 from George Raymond Reed and Gladys Reed to the Trust is a
2 nullity with respect to the United States.

3 **E. Default Judgment Regarding Deeds of Trust**

4 The United States seeks a default judgment that the deeds of
5 trust in favor of Shirley Lundy, George Loren Reed, and Duane
6 Reed against the Subject Property are fraudulent and do not
7 create any interest in the purported beneficiaries. The FAC
8 alleges that the deeds of trust that encumber the Subject
9 Property were made to "hinder, delay, or defraud the present and
10 future creditors of George Raymond Reed, Gladys Reed, and George
11 Loren Reed, including the United States, in the collection of
12 debts lawfully due or to be due." FAC ¶ 40. Taking this
13 allegation as true, the encumbrances are fraudulent pursuant to
14 Civil Code section 3439.04. Consequently, the deeds of trust are
15 a nullity with respect to the United States' claim. See Cal.
16 Civ. Code § 3439.07(a)(1).

17 **F. Current Ownership of the Property**

18 On October 2, 1991, abstracts of the judgement in the
19 previous action were recorded with the County Recorder's Office
20 for Stanislaus County against the Subject Property. FAC ¶ 28.
21 Any interest in these parcels held by Taxpayers' heirs, by
22 intestacy or bequest, is subject to the United States' claim.
23 The Court takes as true the United States' allegations that the
24 Successors are the only persons who may claim any interest in
25 property nominally held by the Trust, including the Subject
26 Property. FAC ¶ 19. Additionally, Successors are the only heirs

1 of Taxpayers that would receive property formerly held by
2 Taxpayers, under applicable law. Id. at ¶ 20. The judgments
3 from the prior action continue to attach to the Adjoining Parcels
4 by virtue of George Raymond Reed's ownership. The judgments
5 continue to attach to Parcels 1, 2, and 3, despite the purported
6 transfer to the Trust because the transfer was fraudulent, as
7 concluded above.

8 **G. Lidco's Interest**

9 Defendant Lidco is the judgement lien creditor under an
10 abstract of judgment recorded with the County Recorder's Office
11 for Stanislaus County on January 11, 1987, and renewed on October
12 29, 1996. The United States and Lidco stipulate that Lidco's
13 judgment is senior to the United States' judgments. Pursuant to
14 the stipulation, the proceeds from the judicial sale of the
15 Subject Property shall be distributed to Lidco to satisfy its
16 judgment lien before distribution to the United States to satisfy
17 the Taxpayers' federal tax liabilities.

18 **H. Validity of the Tax Liens**

19 The federal tax liens underlying the money judgments entered
20 against Taxpayers are valid. The tax liens give the United
21 States an interest in the Subject Property. Under 26 U.S.C.
22 sections 7402 and 7403, this Court may order the sale of the
23 property in question and the distribution of the proceeds.

24
25 **ACCORDINGLY:**

26 The federal tax liens underlying the money judgments are

1 hereby enforced against Parcels 1, 2, and 3 and the Adjoining
2 Parcels, and all improvements, buildings, and appurtenances
3 thereon or thereto (collectively the "Subject Property"). The
4 Internal Revenue Service is authorized and directed to offer for
5 public sale the Subject Property. This final judgment and order
6 shall act as a special writ of execution and no further orders or
7 process from the Court shall be required. The terms and
8 conditions of sale shall comply with 28 U.S.C. sections 2001 and
9 2002 and Local Rule A-570, as follows:

- 10 1. The Internal Revenue Service is authorized to have free
11 access to the Subject Property and to take all actions
12 necessary to preserve the Subject Property, including
13 without limitation, retaining a locksmith or other
14 person to change or install locks or other security
15 devices on any part of the Subject Property, until the
16 deed of the Subject Property is delivered to the
17 ultimate purchaser.
- 18 2. The sale shall be free and clear of the interests of
19 George Loren Reed, Duane Reed, Shirley Lundy, and all
20 other parties named in this case.
- 21 3. The sale shall be subject to all laws, ordinances, and
22 governmental regulations (including building and zoning
23 ordinances), affecting the premises, and easements and
24 restrictions of record, if any.
- 25 4. The public sale of the Subject Property shall be held
26 either at the courthouse of the county in which the

1 realty is located, or on the premises.

2 5. The date and time for sale are to be announced by the
3 Internal Revenue Service.

4 6. Notice of the sale shall be published once a week for
5 at least four (4) consecutive weeks before the sale in
6 at least one newspaper regularly issued and of general
7 circulation in Stanislaus County, where the realty is
8 situated, and at the discretion of the Internal Revenue
9 Service, by any other notice that it deems appropriate.
10 The notice shall contain a description of the Subject
11 Property and shall contain the essential terms and
12 conditions of sale in this Final Judgment and Order of
13 Foreclosure.

14 7. A reasonable minimum bid shall be determined by the
15 United States. If the minimum bid is not met or
16 exceeded, the Internal Revenue Service may, without
17 further permission of this Court, and under the terms
18 and conditions in this order of sale, hold a new public
19 sale, if necessary, and reduce the minimum bid.

20 8. The successful bidder shall be required to deposit at
21 the time of sale with the Internal Revenue Service a
22 minimum of ten (10) percent of his or her bid, with the
23 deposit to be made by cashiers or certified check made
24 payable to "United States Treasury." Before being
25 permitted to bid at the sale, bidders shall display to
26 the Internal Revenue Service proof that they are able

1 to comply with this requirement. No bids will be
2 received from any person who has not presented proof
3 that, if they are the successful bidder, they can make
4 the deposit required by this judgment.

5 9. The balance of the purchase price for the Subject
6 Property is to be paid to the Internal Revenue Service
7 by a certified or cashier's check payable to the
8 "United States Treasury" within sixty (60) days after
9 the date the bid is accepted. If the bidder fails to
10 fulfill this requirement, the deposit shall be
11 forfeited and shall be applied to cover the expenses of
12 the sale, with any amount remaining to be applied to
13 the outstanding tax liability, and the Subject Property
14 shall be again offered for sale under the terms and
15 conditions of this order. The United States may bid as
16 a creditor against its judgment without tender of cash.

17 10. The sale of the Subject Property shall be subject to
18 confirmation by this Court as required by Local Rule A-
19 570. Absent a written objection filed within three
20 days of the sale, or the purchaser's default, the sale
21 shall stand confirmed without any action by the Court.
22 On confirmation of the sale of the Subject Property,
23 and receipt of payment in full, the Internal Revenue
24 Service shall execute and deliver a Certificate of Sale
25 and Deed conveying the Subject Property to the
26 purchaser. On confirmation of the sale, all interests

1 in, liens against, or claims to, the Subject Property
2 that are held or asserted by the plaintiff or the
3 defendants in this action are discharged and
4 extinguished.

5 11. The sale is ordered pursuant to 28 U.S.C. section 2001,
6 and is made without right of redemption. Possession of
7 the property sold shall be yielded to the purchaser
8 upon the production of a copy of the Certificate of
9 Sale and deed. If there is a refusal to so yield, a
10 Writ of Assistance may, without further notice, be
11 issued by the Clerk of this Court to compel delivery of
12 the Subject Property to the purchaser.

13 12. Until the sale date, George Loren Reed, Duane Reed, and
14 Shirley Lundy shall take all reasonable steps necessary
15 to preserve the Subject Property (including all
16 buildings, improvements, and fixtures) in its current
17 condition including, without limitation, maintaining
18 fire and casualty insurance policies on the property.
19 They shall not commit waste against the Subject
20 Property, nor shall they cause or permit anyone else to
21 do so. They shall not do anything that tends to reduce
22 the value or marketability of the Subject Property, nor
23 shall they cause or permit anyone else to do so. The
24 taxpayers and the defendants shall not record any
25 instruments, publish any notice, or take any other
26 action (such as running newspaper advertisements) that

1 may directly or indirectly tend to adversely affect the
2 value of the Subject Property or that may tend to deter
3 or discourage potential bidders from participating in
4 the public auction.

5 13. George Loren Reed and any other persons occupying the
6 Subject Property shall leave the property permanently
7 within 30 days of the date of the Final Judgment and
8 Order of Foreclosure, unless the United States agrees
9 otherwise in writing. Each shall take with them their
10 personal property, but leave all improvements,
11 buildings, fixtures, and appurtenances. If any person
12 occupying the property fails or refuses to leave and
13 vacate the property by the time specified in this
14 order, the U.S. Marshal and his deputies and/or the
15 Internal Revenue Service are authorized and directed to
16 take all actions that are reasonably necessary to bring
17 about the ejectment of those persons. If any person
18 fails or refuses to remove his or her personal property
19 from the property by the time specified herein, the
20 personal property remaining on the Subject Property is
21 deemed forfeited and abandoned. The Internal Revenue
22 Service is authorized to remove and dispose of such
23 personal property in whatever manner the Internal
24 Revenue Service sees fit, including sale with the
25 proceeds applied first to the expenses of sale and the
26 remainder to the tax liabilities giving rise to the

1 lien upon which foreclosure is hereby ordered.

2 14. After the sale is confirmed by this Court, the Internal
3 Revenue Service shall distribute the amount paid by the
4 purchaser as follows:

5 a. First, the Internal Revenue Service
6 shall retain an amount sufficient to cover
7 the expenses of the sale, including an amount
8 sufficient to cover the expenses of any steps
9 taken to secure or maintain the Subject
10 Property pending sale and confirmation by the
11 Court;

12 b. Second, to all taxes unpaid and matured that
13 are owed for real property taxes on the Subject
14 Property;

15 c. Third, to all amounts owed under the judgment
16 lien held by Lidco, Inc.

17 d. Fourth, the remainder to be applied towards George
18 Raymond Reed's and Gladys Reed's underlying federal tax
19 liabilities as reflected on the money judgments entered
20 against them (jointly and severally) on December 12,
21 1989, in the amount of \$283,272.33, plus penalties and
22 interest since February 22, 1988.

23 15. Any balance remaining after the above payments shall be
24 held by the Clerk pending further order of the Court.
25
26

1 IT IS SO ORDERED.

2 **Dated: February 2, 2006**
810ha4

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE